



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF

AFLG-PRO (715)

8 Mar 99

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 99-15, Protest Analysis for First Quarter FY 99

1. GAO Protests filed:	1Qtr 99	1 Qtr 98
USA Forces Command	19	15
Total protests filed	42	47
Agency-level protests	4	NA
Total protests filed	15	NA

2. Lessons learned:

a. AMC

(1) **Ceradyne, Inc. and Advanced Protection Products, Inc.**, B-280741.1 through B-280741.7, (withdrawn.) Solicitation using performance specifications frequently ask for a sample item as part of proposal submission. In the instant RFP only one sample was requested, which was subjected to many tests. In the future, AMC will consider requesting more samples or actually awarding multiple contracts for sample testing and then doing a down-select for production. This strategy should provide a more studied and objective standard for the selection of the production contractor.

(2) **Day and Zimmermann/IMR L.L.C.**, B-280568; B-280569, (denied.) Debriefing took place at the government installation. This limited the number of contractor personnel that the contractor sent to attend the debriefing. Even though the contractor selected their own team to go they failed to send a person with management decision authority to attend the

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debriefing. This may have prevented the possibility of the contractor protesting the award. In the future AMC will request that contractor's management decision-makers be present for the debriefing.

b. USACE:

Adirondack Construction Corp. v. United States of America, ct. Fed. Cl., No. 98-698 C, 30 Oct 98. In a ruling from the bench on a motion for summary judgment, the judge ordered the Corps to treat plaintiff's bid as having been timely submitted, thus reversing the Comptroller General's decision to deny Adirondack's late-bid protest. The GAO denied the protest on the basis that protester's hand-delivered bid was untimely according to the official clock. The Comptroller General determined that even though the District had changed the location of bid opening within hours of opening, the protester's failure to do all that it reasonably could to make a timely submission was the paramount cause of lateness. The Court of Federal Claims; however, held that the Contracting Officer abused her discretion by changing the designated room for bid opening on the day of bid opening, without notifying bidders of the change. The KO should have placed a representative in the original bid opening room to receive bids and then carry them to the new room at the designated time, delayed bid opening for a short time to allow bidders to adjust to the new room assignment; and/or notified potential bidders by phone of the room change. Furthermore, the Court held that it was reasonable for the plaintiff's representative to rely on the clock in the original bid opening room to synchronize his watch, and that to choose any other clock as the official time would have been fundamentally unfair and arbitrary and capricious. The Court also noted that bids had not been opened when plaintiff's bid was received; and therefore, the bidding process was not compromised.

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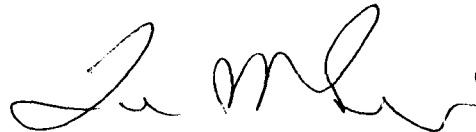
c. Other DA

Satellite Services, Inc., B-280945; b-28094 and B-280945.3, NGB-MO, (sustained.) Satellite Services protested a contract for construction work at various National Guard installations. Satellite asserted that the RFP was flawed because the agency was committing itself neither to order a stated minimum quantity of services nor to order all of its requirements from the successful offeror, rendering illusory the consideration necessary for an enforceable contract.

Award under solicitation for construction services would not result in a binding requirements contract, where the solicitation does not obligate the agency to order any work at all from any individual contractor, and where, despite government promise to allow awardees to enter into limited competition for future task orders, the Contracting Officer can deny contractors the right to compete if it is "in the best interest of the government." Award under solicitation for construction services would not result in a binding indefinite-quantity contract where it contains no obligatory minimum quantity, rendering the government's obligations illusory and, therefore, unenforceable.

3. The enclosed case involves an agency's loss of a quote received through the Federal Acquisition Computer Network due to a computer malfunction.

4. For additional information, contact Irene Hamm,
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Encl

American Material Handling, Inc., B-281556

24 Feb 99

DIGEST

Agency's loss of a quote received through the Federal Acquisition Computer Network due to a computer malfunction does not provide a basis to sustain the protest where the loss was an isolated error, and was not part of a deliberate effort to exclude the protester from the competition or the result of the agency's failure to have adequate procedures in place for the receipt and safeguarding of quotes.

DECISION

American Material Handling, Inc. protested the award of a contract to R&R Limited under request for quotations (RFQ) No. F04684-98-Q-S178, issued by the Department of the Air Force for a 40-foot articulating boom lift. The procurement was solicited under simplified acquisition procedures through the Federal Acquisition Computer Network (FACNET).¹¹ GAO denied the protest. The Air Force issued the RFQ through the FACNET on 27 Aug 98. Soliciting through FACNET requires electronically transmitting the solicitation from a computer terminal to a government gateway, which is a computer/communications system performing a variety of data management functions. After processing by the gateway, the information is transmitted through a network entry point to Value-Added-Networks (VAN), which are private sector entities that provide the electronic procurement information to businesses that have registered to contract with the government through the FACNET. Any electronic commerce, such as the submission of a quote, requires these businesses to access the same process in reverse order. *SDM Supply, Inc.*, supra, at 2. Here, the RFQ was transmitted from Vandenberg Air Force Base (AFB) through the government gateway at Hill AFB with a stated due date for quotes of 4 Sep. American asserted that it transmitted a quote priced at \$51,731 for the boom lift in response to the RFQ on 4 Sep. In support of this assertion, American submitted a copy of the quote it claimed to have submitted with a 4 Sep date on it. American explained that the copy of the quote was returned by its VAN, and that the date was automatically recorded on the copied quote when it was transmitted through the FACNET. According to the Air Force, their computer system at Vandenberg AFB reserved for the receipt of quotes malfunctioned on 4 Sep, and they were unable to retrieve any quotes that may have been submitted on that date. ¹² In view of this problem, the Air Force retransmitted the RFQ on 17 Sep, with a revised due date for quotes of 21. The agency also intended to transmit with the reissued RFQ a note stating as follows: "Our computer system crashed and all bid offers were lost. Please submit your bid no later than 21 Sep 98." Agency Report, Tab 5, Buyer's Note, 16 Sep 98. However, during the course of this protest it was discovered by the agency that the note erroneously "stayed within the government computer system," and was not transmitted over the FACNET. Agency Memorandum of 5 Feb 99. The protester explained that it did not submit a second quote upon seeing only the retransmission of the RFQ because the protester assumed that its quote was properly submitted, and was unaware from the retransmission itself that its quote had been lost due to a malfunction in the Air Force's computer system. On 21 Sep, the Air Force received a quote in response to the retransmitted RFQ from R&R at a price of \$52,040. No other quotes were received, and a purchase order was issued to R&R on 29 Sep. ¹³ American asserted that it was being unfairly "penalized for [the agency's] computer failure," and argued that it should have received the purchase order. Protest at 2. When using simplified acquisition procedures, agencies must promote competition "to the maximum extent practicable." 10 U.S.C. § 2304(g)(3) (1994). In meeting this requirement, agencies must make reasonable efforts, consistent with efficiency and economy, to afford all eligible and interested vendors an opportunity to compete. *S.D.M. Supply, Inc.*, supra, at 4. Agencies have a fundamental obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations received and to give them fair consideration. *Id.* However, as a practical matter, even with appropriate procedures in place, an agency may lose or misplace a bid or quotation, and the occasional loss of a bid or quotation--even if through the negligence of the agency--generally does not entitle the bidder or vendor to relief.